

Docket

96-18



Federal Communications Commission
Washington, D.C. 20554

AUG 14 1997

Mr. Irving B. Kemp, III
Route 1, Box 172A
Pikeville, Tennessee 37367

Dear Mr. Kemp:

Thank you for your letter of March 19, 1997, which was forwarded to us from the office of Senator Bill Frist, regarding the Commission's policies with regard to licensing of 931 MHz paging systems. You express concern that your paging application will be dismissed and that paging frequencies will be awarded in a competitive bidding process.

The Commission is not retroactively dismissing pending applications. In fact, the Commission has taken several steps to allow site-by-site licensing to continue during the rulemaking process. Initially, when the Notice of Proposed Rulemaking was adopted on February 8, 1996, the Commission imposed a freeze on new applications for proposing geographic area licensing for exclusively licensed paging channels, including 931 MHz channels. The freeze was imposed for two reasons: (1) accepting new applications after releasing the Notice would impair the objectives of the proceeding, and (2) many speculation paging applications had been filed recently with the Commission, causing a substantial backlog of applications and delaying the processing of legitimate applications. All pending applications (*i.e.*, applications filed with the Commission by February 8, 1996) were processed under our then-existing rules. The Commission also sought comment from the public regarding appropriate interim licensing options during the rulemaking proceeding.

Based on the comments that were filed regarding interim licensing, the Commission subsequently partially lifted the freeze and allowed paging licensees to file for expansion sites within 40 miles of an operating site. Thus, site-by-site licensing continued for incumbent licensees seeking to expand their systems. A Public Notice was released advising that all such expansion applications filed on or before July 31, 1996 would be processed, and that applications filed after July 31, 1996 might not be processed.

On February 20, 1997, the Commission released a Second Report and Order and Further Notice of Proposed Rule Making that adopted rules governing geographic area licensing for paging licenses and established competitive bidding procedures for those systems. Specifically, the Commission determined that all mutually exclusive applications for non-nationwide common carrier paging licenses and exclusive non-nationwide private carrier paging channels would be subject to competitive bidding procedures. The Commission also decided to dismiss all applications filed after July 31, 1996 and all pending mutually exclusive applications which could not be resolved under our pre-existing rules.

The Commission has imposed similar freezes in a number of other proceedings to facilitate the transition to geographic licensing and auctions, including Multipoint Distribution Service, 800 and 900 MHz Specialized Mobile Radio (SMR) Service, Location and Monitoring Service, 220 MHz Service and 39 GHz Service. Our decision in these proceedings to suspend acceptance of applications while the related rulemaking was pending advances two critical goals -- preservation of our ability to assign licenses through auctions, and deterrence of license fraud and speculation. In particular, we are concerned that the potential benefits of geographic area licensing, with competitive bidding used to select from among competing applicants, would be undermined by continuing to invite site-specific applications for "free" spectrum on a first-come, first-served basis. Similarly, the Commission's decision to dismiss pending mutually exclusive applications and post-July 31, 1996 applications is well within its authority and does not constitute retroactive action.

Assigning frequencies by auction helps deter fraud and speculation and ensures that this valuable public resource is assigned rapidly and efficiently to the parties who value it the most, rather than given away to the first party who files its application with the Commission. The Commission has stated its belief in other contexts (such as SMR) that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures.

The Commission's newly adopted rules to auction paging frequencies is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use.

Moreover, the Commission has taken a number of steps to ensure that paging providers that are small businesses are not adversely affected by the transition to geographic area licensing and the use of competitive bidding procedures to award paging licenses. We are establishing licensing areas of a size that will provide realistic bidding opportunities for small and medium-sized operators. We have also adopted special provisions in our competitive bidding rules for small businesses to facilitate their participation in the auction process. In the Further Notice of Proposed Rule Making, we have proposed to allow paging licensees to partition their licensing areas in order to promote quicker build-out of small markets and rural areas.

Mr. Irving B. Kemp, III

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These facts regarding the rulemaking proceeding and interim licensing are a matter of public record in the Commission's rules, orders, and public notices. If you used an application preparation service and were not advised of these facts, you could be a victim of a fraudulent application investment scheme. The Commission, the United States Securities and Exchange Commission and the Federal Trade Commission are investigating fraudulent investment schemes involving paging and other wireless services. Generally, the perpetrators target unsophisticated investors and represent that paging licenses have a great value that can be recouped through subsequent sale. Investors also may be deceived or unaware of the obligations with which licensees must comply. Unfortunately, investors who are induced to file applications are often targeted a second time by different fraud perpetrators offering to construct the paging system. The FCC Call Center, 1-888-CALL-FCC (225-5322), will forward data from telemarketing fraud victims to the National Fraud Information Center where it is made available to law enforcement personnel on a nationwide basis. We strongly recommend that you call the FCC Call Center and provide the Call Center representative with information pertaining to the paging application investment. Additionally, you may also wish to promptly contact your State Commission, State Attorney General or the National Fraud center directly at 1-800-876-7060.

Thank you for your inquiry.

Sincerely,


David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Copy to: The Honorable Bill Frist

BILL FRIST
TENNESSEE

United States Senate
WASHINGTON, DC 20510-4205

COMMITTEES:

Commerce, Science, and Transportation
Budget
Labor and Human Resources
Small Business
Foreign Relations

April 28, 1997

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PR-Paging
3445*

Ms. Judith L. Harris
Director, Office of Legislative Affairs
Federal Communication Commission
1919 M Street, N.W. Room 808
Washington, D.C. 20554

Dear Ms. Harris:

Enclosed you will find a copy of a letter sent to me from one of my constituents. I believe that your office would be best able to address these concerns.

I would appreciate it if you would respond directly to my constituent and send me a copy of your correspondence for my files. If you have any questions concerning this matter please contact David Broome in my Washington, D.C. office. Thank you so much for giving these concerns full and fair consideration.

With warm regards, I am

Sincerely,


Bill Frist
United States Senator

WHF/dvb

March 19, 1997

The Hon. Bill Frist
United States Senate
825 Hart Senate Office Bldg.
Washington, D.C. 20510

L 109141
Comm
DVB

Dear Senator Frist,

I am an applicant for a 931 MHz paging License in the Waco/Brownsville/Victoria, Texas market, which applications are currently pending before the Federal Communications Commission. I am writing to urge you to insist that the Federal Communications Commission reverse its February 24, 1997 decision in WT Docket No. 96-18 looking to dismiss my pending applications and issue 931 MHz paging licenses in my market solely by auctions in the future.


I paid over \$20,000 for application preparation and filing services and properly filed my applications in accordance with the FCC Rules and policies then in effect at the time of filing. The fact that the FCC now wants to change its rules, dismiss my application and hold an auction means that the substantial amount of money I have invested, from my life's savings, in this project will be lost. Neither I nor many other similarly situation applicants who properly filed in good faith have the resources to bid hundreds of thousands of dollars to win an auction license for an entire, big as state-sized MTA geographic area, as proposed by the Commission.

I will have no opportunity to obtain an FCC license, build a paging station and participate in the communications industry as I had hoped to do, and which Congress has committed to seeing happen. I will lose all of my substantial investment to date because the FCC wants to arbitrarily change its rules after I filed my application. This retroactive action by a Federal agency is not fair, and should not be condoned by Congress. Congress has oversight of this federal agency and the FCC should be held accountable.

I urge you to conduct an inquiry and take appropriate action on behalf of your constituents and correct its action before it is too late. All I am asking for is equitable treatment, which in this case could include "grandfathering" of mine and similar applications by the Commission, and appropriate processing and grant of these applications. Such would not interfere with future auctions, as planned by the FCC.

Last year I wrote to you when the FCC attempted another rule change tactic in an attempt to have my application and others dismissed. Thanks to intervention by you and some of your colleagues, on our behalf, that retroactive rule change was rescinded. I thank you and your staff for your efforts on my behalf.

Sincerely,



Irving B. Kemp III
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Pikeville, TN 37367